SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of THE NATIONAL WASTE & RECYCLING ASSOCIATION, CITY RECYCLING CORP., EMPIRE RECYCLING SERVICES, LLC, HI-TECH RESOURCE RECOVERY, INC., METROPOLITAN TRANSFER STATION, INC., RAFAEL BATISTA, AND WILLIAM MACKIE, Petitioners-Plaintiffs, For Judgment Pursuant to Article 78 of the New York Civil Practice Law and Rules, and Declaratory Judgment, -against- THE CITY OF NEW YORK, BILL de BLASIO IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF NEW YORK, THE CITY COUNCIL OF THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SANITATION, AND KATHRYN GARCIA IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE CITY OF NEW YORK DEPARTMENT OF SANITATION, Respondents-Defendants.	VERIFIED PETITION AND COMPLAINT Index No. 101686/2018

Petitioners-Plaintiffs National Waste & Recycling Association – New York Chapter ("NWRA"), Hi-Tech Resource Recovery, Inc., Empire Recycling Services, LLC, City Recycling Corp., Metropolitan Transfer Station, Inc. (collectively, "Company-Petitioners"), Rafael Batista and William Mackie (collectively, "Individual Petitioners") submit this Verified Petition for judgment pursuant to Article 78 of the New York Civil Practice Law and Rules ("CPLR") and this Complaint seeking declaratory relief pursuant to section 3001 of the CPLR, and respectfully allege as to their own conduct, and upon information and belief as to the conduct of others and matters of public record as follows:

PRELIMINARY STATEMENT

1. This lawsuit seeks relief from an illegal New York City Local Law that arbitrarily cripples the capacity of the New York solid waste industry to serve the public with safe, economical, and environmentally sound garbage management. Local Law 152 forces enormous capacity reductions on some of the most important solid waste facilities in the City – transfer stations where thousands of tons of solid waste are collected and consolidated on a daily basis for transportation to recycling and disposal facilities. The City unlawfully skirted required environmental reviews in order to pass a law that has no rational relationship to the City's stated goals of reducing environmental impacts. Local Law 152 also flouts New York State law governing solid waste and ignores the City's own Solid Waste Management Plan. Local Law 152 will ruin several local businesses, eliminate hundreds of jobs, disrupt and increase the costs of the City's waste management infrastructure, and harm the environment. The Court's intervention is necessary to stop this injustice and protect the Petitioners and the public.

2. Petitioners are (i) owners of putrescible and non-putrescible waste transfer stations in New York City, (ii) the local chapter of a non-profit trade association that represents private-sector waste and recycling companies throughout the United States, and (iii) individuals who live and work in the City of New York. Petitioners seek relief from Local Law 152 of 2018, signed into law by Respondent-Defendant Mayor Bill De Blasio on August 16, 2018, after Respondent-Defendant City Council of New York voted to approve the law on July 18, 2018.

3. Local Law 152 was adopted in direct violation of the New York State Environmental Quality Review Act ("SEQRA") and the City Environmental Quality Review ("CEQR") requirements because, instead of taking the mandatory "hard look" at the law's potential environmental and socioeconomic impacts, the City engaged in a superficial assessment relying on flawed assumptions and inaccurate data to understate the law's potential impacts and

thereby evade proper review. SEQRA was separately violated because the City improperly segmented review of Local Law 152's impacts from the related, cumulative impacts of the City's recently released plan to create commercial waste zones.

4. Local Law 152 also directly contradicts the City's approved Solid Waste Management Plan, which was prepared and approved by the New York State Department of Environmental Conservation ("NYSDEC") under New York State law, so Local Law 152 is preempted. Moreover, Local Law 152 is unconstitutionally vague because it cannot be understood by its regulated community, and it lacks critical standards for enforcement. It also deprives the transfer station owners of their property interest in permits that allow the transfer stations to operate, through an arbitrary and capricious process that violates the owners' substantive due process rights.

5. Local Law 152 amends the Administrative Code of the City of New York to impose involuntary reductions in the permitted capacity at 21 transfer stations in four of the City's community districts. The law mandates 50% reductions to currently permitted capacity at private putrescible and non-putrescible transfer stations in Brooklyn Community District 1, and 33% capacity reductions to transfer stations located in Bronx Community Districts 1 and 2, and Queens Community District 12.

6. The law devastates the targeted transfer stations, putting many of them at risk of closure, which would result in the loss of hundreds of jobs and secondary impacts on local small businesses that rely on the transfer stations. The law will increase truck traffic, congestion, noise, air emissions, and other impacts throughout the City, none of which the City studied.

7. The City admits that private transfer stations are a critical component of New York City's solid waste management system. Every day, they sort, recycle and consolidate

thousands of tons of waste materials generated by businesses and institutions across the five boroughs. This solid waste is brought to the stations by collection trucks, and consolidated loads are taken to landfills and recycling facilities located out of the City in larger trucks or by rail. The targeted transfer stations also process construction and demolition ("C&D") debris from large and small construction projects throughout the City, including from large public infrastructure projects. After serious storms or other disasters the private transfer stations are critical to the removal of debris and waste so that recovery and rebuilding can start quickly. They all operate legally in manufacturing zones and are proximate to transportation infrastructure and the customers they serve. They employ hundreds of City residents, many of whom live within the four community districts where the facilities are located, with good paying jobs. These transfer stations support other local small businesses, including equipment and parts vendors and fuel suppliers.

8. The City enacted Local Law 152 claiming that it promotes "fairness and justice," but did so without proper consideration of its true environmental consequences or calamitous impacts on the targeted transfer stations, their employees, and other businesses that rely on them.

9. SEQRA and CEQR are long-standing, fundamental environmental protection laws that mandate that any proposed government action (including local legislative action) having the potential to cause a significant adverse environmental or socioeconomic impact must go through a complete environmental review process. This includes the preparation of a proposed scope identifying the actions' impacts, setting forth the studies and analyses to be undertaken, public opportunity to review and comment on the scope, preparation of a draft environmental impact statement ("EIS") based on the scope, public opportunity to review and comment on the draft EIS, preparation of a final EIS factoring in the public's comments, and

issuance of a findings statement detailing how impacts have been avoided, minimized and mitigated to the fullest extent practicable.

10. The City did not satisfy any of these requirements. Instead, *just moments before the City Council passed Local Law 152*, the City released a Short Form Environmental Assessment Statement ("EAS") that concluded that the law had no potential to cause any significant environmental or socioeconomic impact whatsoever, and issued a "negative declaration" cutting off any further review. Petitioners and others, who for months had urged the City to study the impact of Local Law 152, expressed outrage at this arbitrary, capricious, and unlawful action. The City Council and the de Blasio administration ignored these protests.

11. The EAS is fundamentally flawed. The entire EAS relies on an incorrect foundational assumption that there is an abundance of "available slack capacity" at transfer stations in the City to offset the impacts of the law's forced capacity reductions at the targeted transfer stations. The City incorrectly calculated this available slack capacity based on a daily average of tons of waste processed at each transfer station over the previous four years, and in the process made a host of errors that makes the EAS worthless and legally insufficient.

12. This Petition, including the accompanying affidavits from transfer station owners and experts in the waste industry, show that the City's four-year average calculation of available slack capacity is mistaken and unreliable, and therefore cannot as a matter of law support the City's negative declaration under SEQRA and CEQR. The information showing the flaws of the EAS and the true impacts of Local Law 152 was easily accessible to the City before it prepared the EAS.

13. The City's calculated four-year daily average:

- Was wrongly skewed downward (thereby increasing the calculated available slack) because it included Saturday afternoons, Sundays, and holidays when the facilities are closed;

- Failed to account for current waste processing trends at the transfer stations, which show that many are operating at or close to their permitted capacity and do not have the available slack capacity that the City claims exists;

- Does not account at all for daily, weekly, and seasonal fluctuations in waste generation—such as cyclical construction seasons and restaurants' busy seasons—that regularly and predictably require a transfer station's full capacity; and

- The daily capacity limit set forth in the permits issued to these transfer stations are intended to accommodate their busiest days of operation, not an average over four years.

14. This Petition and accompanying affidavits demonstrate that in many cases where the City claims a transfer station has slack capacity, none in fact exists. In other cases where a transfer station technically might have capacity under its permitted cap to manage displaced waste, the EAS fails to assess whether there is adequate infrastructure and equipment in place to confirm the capacity is actually available.

15. Since the City uses this inaccurate and unreliable calculation of available slack capacity as a foundational element of its assessment, the EAS grossly understated the law's potential impacts, and the City's issuance of a negative declaration was in clear violation of SEQRA and CEQR.

16. Independent from using an improper slack capacity calculation, the City's assessment of potential job losses due to the law separately violates SEQRA and CEQR. The City's EAS acknowledges that Local Law 152 has the potential to result in the closure of many of the targeted transfer stations but concludes that only approximately 80 jobs would be lost. That inaccurate projection conveniently falls under CEQR's 100-job loss threshold for

significant environmental impacts requiring a full environmental review. Instead of performing the simple task of verifying actual employment levels at the targeted transfer stations, including those the City admits are at risk of closure, the City used a theoretical calculation of jobs required to operate the facilities.

17. This Petition demonstrates the City's theoretical calculation produced wildly inaccurate results, and in a number of cases, the City's calculation was an order of magnitude below the transfer station's actual employment levels. As a result, the projected actual job losses far exceed CEQR's 100-job loss threshold requiring a full environmental review of the law. Thus, for this separate and independent reason, the City's negative declaration was invalid under SEQRA and CEQR.

18. The City's EAS also argues that impacts are lessened because Local Law 152 offers partial relief from mandated capacity reductions for transfer stations that recycle. But the maximum allowed relief is minimal and subject to further limitation based on a rigid formula that ignores the fact that transfer stations are at the mercy of unstable global markets for recyclables. In fact, the law actually discourages future expansion of recycling operations at the transfer stations. Further, partial exemption would not even be available where recycling operations are undertaken by affiliated companies on the same or adjacent parcels. And in at least one instance, the organic waste exemption is inconsistent with a targeted transfer station's contractual obligation to support the City's own organic waste diversion initiative.

19. In addition, Local Law 152 violates ECL Section 27-0107 and its implementing regulations governing the adoption and approval of solid waste management plans ("SWMP"). After years of work, the City adopted a SWMP in 2006 that was approved by the State and governs solid waste management to this day. The City failed to modify its 2006 SWMP to reflect

Local Law 152's forced capacity reductions, which are far in excess of the reductions allowed by the SWMP, or secure approval of the modification from the NYSDEC, as required by law. Compounding the Council and Mayor's arbitrary actions, the City's Department of Sanitation ("DSNY") and transfer station owners had negotiated voluntary reductions in capacity equal to the amounts called for in the SWMP but the City Council denied DSNY the authority to finalize the agreements.

20. The City's forced and draconian capacity reductions are also illegal under the doctrine of conflict preemption. Each of the targeted transfer stations have permits issued by NYSDEC and DSNY, both authorizing the transfer station to process the same amount of waste each day. Thus, the City's forced capacity reductions are illegal under the doctrine of conflict preemption because the rights and benefits granted under NYSDEC's solid waste permits are curtailed by Local Law 152, and because the City cannot conform with the SWMP and enforce Local Law 152.

21. Lastly, the City has violated the targeted transfer station owners' constitutional rights because Local Law 152 mandates reductions in capacity authorized in legally issued permits without due process of law.

22. Petitioners bring this hybrid Article 78 proceeding/plenary action seeking an order enjoining Respondents from implementing Local Law 152, declaring that Local Law 152 is invalid and unconstitutional, and granting Petitioners other relief consistent with this Petition.

JURISDICTION

23. This Court has subject matter jurisdiction to decide this Petition pursuant to CPLR § 7803 because the Local Law adopted by the City Council is a final determination made in violation of lawful procedure, affected by an error of law, and is arbitrary and capricious. This Court also has jurisdiction to render a declaratory judgment pursuant to CPLR § 3001.

24. This Court has personal jurisdiction over the parties pursuant to CPLR § 301.

25. Venue lies in New York County pursuant to CPLR § 506(b) and 7804(b) because it is where the City Council convened to adopt Intro 157-C and where Mayor de Blasio signed the bill into law as Local Law 152.

PARTIES

26. Petitioner-Plaintiff National Waste & Recycling Association is a non-profit trade association representing private-sector U.S. waste and recycling companies as well as the manufacturers and service providers that do business with those companies, with its principal place of business located at 1550 Crystal Drive, Suite 804, Arlington, Virginia.

27. Petitioner-Plaintiff City Recycling Corp. is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 151 Anthony Street, Brooklyn, New York. City Recycling Corp. owns and operates a construction and demolition waste transfer station located at 151 Anthony Street, Brooklyn, New York, in Brooklyn Community District No. 1.

28. Petitioner-Plaintiff Empire Recycling Services, LLC is a limited liability corporation organized and existing under the laws of the State of New York, with its principal place of business at 538 Stewart Avenue, Brooklyn, New York. Empire Recycling Services LLC owns and operates a non-putrescible waste transfer station located at 538-545 Stewart Avenue, Brooklyn, New York, in Brooklyn Community District No. 1.

29. Petitioner-Plaintiff Hi-Tech Resource Recovery, Inc. is a corporation organized and existing under the laws of the State of New York, with its principal place of business in Glendale, New York. Hi-Tech Resource Recovery owns and operates a municipal solid waste transfer station for non-hazardous municipal solid waste located at 130 Varick Avenue, Brooklyn, New York, in Brooklyn Community District No. 1.

30. Petitioner-Plaintiff Metropolitan Transfer Station, Inc. is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 287 Halleck Street, Bronx, New York. Metropolitan Transfer Station, Inc. owns and operates a putrescible waste transfer station located at 287 Halleck Street, Bronx, New York, in Bronx Community District No. 2.

31. Petitioner-Plaintiff Rafael Batista lives on Bleecker Street, Brooklyn, New York, and works for Titan Industrial Services, which is located at 66-00 Queens Midtown Expressway, Maspeth, Queens, New York. Petitioner Rafael Batista lives and works in New York City.

32. Petitioner-Plaintiff William Mackie lives on East Tremont Avenue, Bronx, New York, and works for Hi-Tech Resource Recovery, Inc., which is located at 130 Varick Avenue, Brooklyn, New York. Petitioner William Mackie lives and works in New York City.

33. Respondent-Defendant the City of New York is a municipality organized and existing under the laws of the State of New York. Respondent-Defendant City, acting through the New York City Council, the Office of the Mayor and the Department of Sanitation, was and is responsible for enacting, adopting and implementing Local Law 152.

34. Respondent-Defendant Bill de Blasio, named here in his official capacity, is the Mayor and chief executive officer of the City of New York under Section 3 of the New York City Charter. Respondent-Defendant de Blasio, acting as Mayor, signed Local Law 152 into effect, and through his oversight of and general authority over the DSNY, is responsible for implementing and enforcing Local Law 152.

35. Respondent-Defendant City Council of the City of New York is the legislative body of the City, established under Chapter 2 of the New York City Charter. Respondent-Defendant City Council was responsible for voting to approve Local Law 152.

36. Respondent-Defendant New York City Department of Sanitation or DSNY is an administrative agency of the City, established under Chapter 31 of the New York City Charter. Respondent-Defendant DSNY was and is responsible for implementing and enforcing Local Law 152.

37. Respondent-Defendant Kathryn Garcia, named here in her official capacity, is the Commissioner of DSNY. Respondent-Defendant Garcia is responsible for implementing and enforcing Local Law 152.

STATEMENT OF FACTS

38. After the City adopted its SWMP in 2006, which was based on a thorough and comprehensive environmental impact analysis under SEQRA and CEQR requirements, and after the DSNY had succeeded in negotiating voluntary reductions in transfer station capacity fully consistent with the amounts specified in the SWMP, the City Council refused to accept those voluntarily negotiated reductions.

39. Instead, the City Council ploughed ahead to enact a law mandating arbitrary capacity reductions far in excess of the reductions called for in the SWMP, without modifying the SWMP, and without any proper consideration of the law's impacts on the environment, individual transfer stations, their employees, local businesses that rely heavily on these transfer stations, or the solid waste management system as a whole.

40. The City Council voted to approve Intro 157-C (the bill that eventually was enacted as Local Law 152), relying on an EAS that concluded the law would not have the potential to cause any significant adverse environmental or socioeconomic impacts. The EAS is riddled with flawed assumptions, inaccurate and missing information, and unsupported conclusions. The faulty EAS nevertheless provided the City with the negative declaration it

needed to claim that it complied with SEQRA and CEQR, when in reality it offered nothing but window-dressing.

41. City Council members had no idea of the contents of the 100-page plus EAS, as it was handed out to them just moments just before the vote. The targeted transfer stations and the public at large never had a chance to review the EAS prior to the City Council's vote.

42. The EAS instead was merely a prop to avoid a proper environmental impact analysis required by law. It deprived the public and the impacted transfer stations of their right to review and comment on a properly prepared analysis of the Local Law 152's anticipated environmental impacts, as required by SEQRA and CEQR.

A. Background of New York City private solid waste transfer stations

43. There are presently 35 putrescible and non-putrescible private solid waste transfer stations operating in New York City. Putrescible waste transfer stations manage waste from restaurants, businesses, residences, and other places that generate garbage that will decompose quickly. Non-putrescible waste transfer stations manage waste and recyclable materials from construction and demolition projects, such as wallboard, wood, carpet, cardboard, concrete, metal, stone, soil, and brick.

44. While DSNY collects and manages municipal solid waste ("MSW") from residences, the City's private transfer stations process MSW from commercial customers, and process construction and demolition debris from construction sites, including large public infrastructure projects.

45. The private transfer stations sort, recycle and consolidate loads of solid waste for removal from the City by truck, barge, or rail. They also process materials for reuse as fill material and as feedstock for anaerobic digestion.

46. NYSDEC and DSNY issued 16 putrescible transfer station permits and 22 non-putrescible transfer station permits to the 35 private transfer stations (a few hold both putrescible and non-putrescible permits for the same transfer station). The permits allow the transfer stations to operate up to their permitted capacity.

47. The City's 35 private transfer stations have a combined permitted capacity of approximately 22,019 tons per day (tpd) for putrescible waste, and 23,370 tpd for non-putrescible waste.

48. Ten of the 16 private putrescible transfer stations, representing approximately 16,309 tpd (74%) of the total private citywide capacity, and 16 of the 22 private non-putrescible transfer stations, representing approximately 17,689 tpd (76%) of the total citywide private capacity, are located within the community districts targeted by Local Law 152.

49. All of these facilities are located in manufacturing zones, and are strategically situated to serve their customers in an efficient, environmentally sound manner in areas of the City accustomed and adapted to industrial uses.

B. New York City's Solid Waste Management Plan

i. The Solid Waste Management Plan called for a negotiated reduction of transfer station capacity of only 6,000 tons per day.

50. In 2006, NYSDEC approved the City's SWMP. The City had submitted the SWMP to NYSDEC for approval pursuant to ECL Section 27-0107 and its implementing regulations. Exhibit A is copy of relevant portions of the City's 2006 SWMP, including: NYSDEC's October 27, 2006 SWMP approval letter; the SWMP Executive Summary; and Chapter 4 – Commercial Waste Management. The full text of this document is available at**:** https://www1.nyc.gov/assets/dsny/site/resources/reports/solid-waste-management-plan.

51. The SWMP sets forth a comprehensive, long-term plan for waste management in the City. One of the plan's primary goals was the rehabilitation of four marine transfer stations ("MTSs") located in Queens, Manhattan, and two locations in western Brooklyn, where solid waste is removed from the City by barge. Exhibit A at Executive Summary 5-7.

52. In a July 27, 2006 letter to then NYSDEC Commissioner Denise Sheehan, Edward Skyler, Office of the Mayor, described the exhaustive process that the City had undertaken to develop the SWMP. This included a full environmental review as required under SEQRA, including the preparation of a full EIS, which was subject to public review and comment, and adoption of a SEQRA Findings Statement. A copy of this letter is attached as Exhibit B.

53. It is evident that both NYSDEC and the City anticipated that any modifications to the SWMP would require prior review and approval of DEC. *See*, Exhibit A, at NYSDEC SWMP Approval Letter, at 2 ("Please note that any proposed modifications to the approved SWMP, and approved modifications thereto, must be submitted to this Department for prior approval, pursuant to 6 NYCRR Section 360-15.11"); *and see*, Exhibit B, Letter from E. Skyler, at 2 ("Once approved, the City will implement the New SWMP and will submit to the Department modifications and compliance reports as required by 6 NYCRR Subpart 360-15.").

54. Thus, the City explicitly recognized its obligation to submit any modification of the SWMP to NYSDEC for approval.

55. The approved SWMP included a proposal to explore reducing permitted capacity in communities with high concentrations of solid waste transfer stations:

> DSNY proposes to explore ways to reduce the daily permitted putrescible capacity in the communities with the greatest concentration of transfer stations as new putrescible transfer station capacity becomes available under the City's new long-term waste export plan. Specifically, DSNY will reduce the

> Citywide, lawfully permitted putrescible and construction and demolition (C&D) transfer capacity by *up to 6,000 [tons per day ("tpd")]* (up to 4,000 tons of putrescible capacity and up to 2,000 tons of C&D capacity) through reductions in the capacity of community districts Bronx 1, Bronx 2, Brooklyn 1 and Queens 12 [(the "Targeted Districts")] as the city-owned MTSs become operational.

Exhibit A, SWMP at 4-10 to 4-11 (emphasis added).

56. The SWMP instructed DSNY and the City Council to negotiate with industry representatives the capacity reductions sought prior to initiating legislative action, and made it clear that the capacity reductions would be pursued to "*the extent that it is legally feasible and does not affect the City's operational ability to dispose of City waste.*" *Id.* (emphasis added).

ii. DSNY successfully negotiated a 6,000 tons per day transfer station capacity reduction, as called for in the SWMP.

57. Following the SWMP's approval, DSNY successfully negotiated the capacity reduction with waste transfer station owners in the four targeted community districts. DSNY's efforts to negotiate these voluntary reductions took many months. City Council staff were fully aware of these negotiations at the time they were taking place as is evidenced by the October 23, 2013 testimony of DSNY's then Commissioner, John Doherty, before the City Council's Committee on Sanitation and Solid Waste Management at a Committee hearing on Intro 1170, a predecessor to Intro 157/Local Law 152. Exhibit C is a copy of the relevant portions of the transcript from the October 25, 2013 hearing. The full hearing testimony transcript is available at: https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1489541&GUID=7A5C5EF4-3B0E-4596-8D7F-05076E3D715E.

58. After the negotiations, DSNY advised the City Council that it was prepared to formalize agreements with these transfer station operators to secure the voluntary capacity reductions that corresponded exactly with the SWMP. Exhibit C, Intro 1170 Hearing Transcript at 18-19.

59. However, despite DSNY doing exactly what was called for in the SWMP, the City Council refused to allow DSNY to proceed with the voluntary capacity reduction agreements. The City Council instead later proceeded to consider a series of bills that far exceeded the capacity reduction stated the 2006 SWMP. The City Council did so without modifying the SWMP or obtaining NYSDEC approval for such modification. *Id.*

C. The City Council's Earlier Versions of Local Law 152: Intro 1170 and Intro 495

i. In 2013, DSNY warned the City Council that forced capacity reductions would require a modification to the SWMP and full consideration of environmental impacts.

60. The City Council considered two bills prior to Intro 157-C to mandate forced capacity reductions at transfer stations in the four targeted community districts.

61. On October 25, 2013, the City Council's Committee on Sanitation and Solid Waste Management held a hearing on Intro 1170 of 2013, which, like Local Law 152, would have mandated forced transfer station capacity reductions in the same four community districts. Although Intro 1170 called for more aggressive capacity reductions than Local Law 152, both far exceeded the SWMP's stated goal of a 6,000 tpd reduction and neither called for voluntary negotiations as required by the 2006 SWMP.

62. At the October 25, 2013 hearing, DSNY Commissioner John J. Doherty testified, explaining to the Committee that private transfer stations constitute a "critical component" of New York City's solid waste management system:

> Lawfully permitted and operated, they are essential to the City's ability to handle more than 26,000 tons of residential and commercial waste (excluding fill material) generated in the five boroughs every day. Transfer stations sort, recycle and consolidate loads of solid waste for removal from the City by truck, barge or rail, and they also process materials for reuse as fill material and, recently, as feedstock for anaerobic digestion.

Exhibit C, Intro 1170 Hearing Transcript at 14.

63. Commissioner Doherty then went on to describe six measures DSNY had already implemented to "strengthen its oversight and enforcement of the transfer station industry." Five of those initiatives included:

- DSNY's Permit and Inspection Unit efforts for transfer stations, which as noted by Commissioner Doherty, "may be the most highly regulated industry in the entire City."

- By 2013, DSNY's enforcement efforts had already reduced the number of permitted transfer stations from 153 in 1990 to 59 in 2013, 18 having closed in Brooklyn 1, Bronx 1, Bronx 2 and Queens 12.

- The City adopted strict rules for siting new transfer stations, including prohibiting an increase in transfer station capacity in any new facilities in Brooklyn 1 and Bronx 2, prohibiting new transfer stations in Queens 12.

- DSNY adopted more stringent operation and maintenance rules to minimize environmental impacts.

- DSNY was required to conduct an extensive environmental review as part the transfer station permit application process.

64. The sixth initiative highlights the voluntary process required by the 2006 SWMP for securing up to 6,000 tpd of capacity reduction in the four community districts, which the City Council ultimately ignored. Commissioner Doherty explained that DSNY "negotiated capacity reductions with the transfer station industry in accordance with the 2006 SWMP." Specifically, he testified that:

- Under the 2006 SWMP, which was approved by the Council, permitted putrescible and construction and demolition debris (C&D) capacity was to be reduced by up to 6,000 tpd through capacity reductions in Bronx 1 and 2, Brooklyn 1, and Queens 12;

- Beginning in late 2006 and through early 2008, the Department met with the owners of all of the putrescible and C&D transfer stations located in these four districts to negotiate capacity reductions, and Council staff participated with the Department in many of the meetings and phone conferences; and

- Through these negotiations, oral agreements were eventually reached with the transfer station owners in these four districts for over 6,000 tpd of permitted capacity reductions, which the Council, though, ultimately decided not to pursue.

Id. at 15-18.

65. Commissioner Doherty's testimony and that of Deputy Commissioner for Legal Affairs Robert Orlin illustrated the City Council's disregard for the 2006 SWMP, and its inclination to avoid a full environmental review of the impacts of Intro 1170 and secure approval for a modification to the SWMP before voting on the bill.

66. Commissioner Doherty noted that the SWMP called for a 6,000 tpd reduction in the affected community districts. He then explained the scope of appropriate review.

> COMMISSIONER DOHERTY: Well, the environmental review that I mentioned will look at the where the waste is going to go to. . . .We did the environmental review for the transfer stations that we currently use and we got through that. That was approved. *But when we moved the waste out of those transfer stations because of the reductions in the Bronx and Brooklyn, now they're going to go to the other locations and you have to look at it, do an environmental review to see the impact of the traffic changes, the noise and the distance they're going to be traveling to these locations.*
>
> COUNCIL MEMBER REYNA: And so when you were engaging in dialogue for the last seven years, the environmental review and its impact was never conducted.
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> * * *
>
> ROBERT ORLIN: I'm Robert Orlin, Deputy Commissioner for Legal Affairs at the Department of Sanitation. The difference is the numbers in this legislation go far beyond anything that the administration and the department were willing to commit to.

Id. at 29-30.

67. Then, the Commissioner explained that though DSNY had negotiated 6,000 tpd in reductions with transfer station owners, "the Council showed no interest in pursuing it at that

point," though DSNY had forwarded to the Council a list of owners who had orally agreed to the necessary reductions. *Id.* at 31. DSNY's Deputy Commissioner for Legal Affairs then noted:

> ROBERT ORLIN: *Well there were no actions taken because we didn't get the City Council to agree with the reduction.*
>
> * * *
>
> CHAIRPERSON JAMES: So, let me just jump in here, Council Member, and sort of try to understand. So in the absence of the Council taking action in 2008, is it your position that the sanitation should just rest on the 6,000 reduction which is contemplated in the SWMP and that is sufficient?
>
> ROBERT ORLIN: *Well, the SWMP calls for 6,000 tons of reduction, right?*
>
> CHAIRPERSON JAMES: *Right***.**
>
> ROBERT ORLIN: And that's what we achieve through the negotiation. It took about 18 months.
>
> * * *
>
> ROBERT ORLIN: *It was in the SWMP, the Council approved the SWMP.* We were negotiating off what the Council approved by a large majority vote.

Id. at 34-35, 71 (emphasis added).

68. Deputy Commissioner Orlin further testified that the "reductions that we negotiated were in all four districts." *Id.* at 54.

69. Deputy Commissioner Orlin also explained to City Council members that the City would be required to undertake an environmental review under SEQRA before any capacity reduction could be imposed:

> ROBERT ORLIN: And addressing your issue about the environmental review, Council Member, even a 6,000 ton reduction by the Council would require environmental review. It's an action under [SEQRA] . . . . It's just that the impacts would be far less and the review would be much easier to complete. *So any action taken by the Council through legislation is always subject to environmental review*. . . .

Id. at 51-52 (emphasis added).

70. Deputy Commissioner Orlin also explained that any reduction beyond the 6,000 tpd envisioned in the SWMP would require a modification to the SWMP itself:

> ROBERT ORLIN: Because SWMP is the City's plan for managing all of the solid waste within the city. The legislation [Intro 1170] would require an 18 percent reduction on average from, you know, putrescible and [construction and demolition (CND)] stations in the four districts. . . . the *State's regulations state that if there was a significant change in the way waste is managed and the locality, that requires a SWMP modification.*

Id. at 72.

71. At the time Intro 1170 was being considered, concerns over the law's unstudied impacts were expressed by diverse interest groups, including affordable housing representatives, the real estate industry, restaurants, and building owners. Exhibit D is copy of the written testimony of these groups before the Committee on October 23, 2013. The full record of written testimony is available at: https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1489541&GUID=7A5C5EF4-3B0E-4596-8D7F-05076E3D715E.

72. Owners of the transfer stations that would be impacted also testified explaining the severe impacts the bill would cause. Consistent with the process envisioned in the approved SWMP, NWRA testified to explain that the solid waste industry was more than "willing to enter into a dialog with City officials and community groups to address issues relating to the transfer stations, including a responsible level of permitted capacity reduction." In other words, even with the passage of time (approximately five years), these transfer station owners were still willing to negotiate voluntary reductions envisioned by the SWMP. Exhibit D, Intro 1170 Written Testimony.

73. The City never entertained this offer to negotiate voluntary reductions.

74. Ultimately, no final action was taken on Intro 1170, but as demonstrated by the subsequent bills and passage of Local Law 152, the City Council refused to take heed of the DSNY's testimony.

ii. In 2014-2015, DSNY reiterated its same concerns at the hearing for Intro 495.

75. In late 2014 or early 2015, Intro 495 was introduced. Like its predecessor, Intro 495 also sought aggressive reductions in permitted capacity at transfer stations in Bronx 1, Bronx 2, Brooklyn 1 and Queens 12 Community Districts.

76. On February 13, 2015, DSNY once again provided testimony at a hearing to consider the bill before the Committee on Sanitation and Solid Waste Management. Commissioner Kathryn Garcia reminded the Committee of the extensive measures DSNY had undertaken to address impacts in the four community districts. Exhibit E is copy of the relevant portions of the transcript from the February 13, 2015 hearing. The full hearing testimony transcript is available at: https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1937616&GUID=2680B9A0-32EF-4B2F-BFD3-85D48111006F

77. Commissioner Garcia also reminded the Committee of DSNY's successful efforts to negotiate transfer station capacity reductions up to 6,000 tpd "but these verbal agreement were never finalized *because the Council ultimately decided not to pursue these reductions*." Exhibit E, Intro 495 Hearing Transcript at 24 (emphasis added).

78. Commissioner Garcia described the significant impacts that would occur if the Council were to pass Intro No. 495 into law, including: (i) unstudied impacts relating to the displacement of waste, (ii) lack of private infrastructure to support the City's residential and commercial organics initiatives and (iii) economic impacts on other private sectors. *Id.* at 26-31.

79. Commissioner Garcia further cautioned the City Council that to reduce the transfer stations capacity by 50%, would require a modification to the SWMP:

> reducing the City's private transfer station capacity by 50% called for under Intro No. 495 will likely require modification to the 2006 Solid Waste Management Plan. The Solid Waste Management Plan specifically includes the public and private transfer stations that are available to manage solid waste generated in the city, and the throughput capacities of all such facilities.

Id. at 31-32.

80. In addition, Commissioner Garcia identified the serious health and safety impacts that would result from the forced mandated capacity reductions proposed in Intro 495:

> For all the reasons I've outlined to you, the Department cannot justifiably support Intro No. 495 without jeopardizing health and sanitary safety in the city. *Instead, we are prepared to immediately reopen negotiations with the industry to achieve higher volume, voluntary reductions of transfer station capacity in these four community districts* at levels that do not endanger public health and safety in the city.

Id. at 33-34 (emphasis added).

81. Commissioner Garcia echoed the concerns previously raised by Commissioner Doherty in 2013 concerning emergency situations:

> Although Intro No. 495 contains an emergency waiver that would allow the Sanitation Commissioner to temporarily waive permit capacity reductions, the transfer stations are likely to no longer exist, or to have the infrastructure to meet an emergency need. A transfer station owner whose capacity is reduced by this legislation will not continue making the same capital investment into its operation as it did in previous years when operating at a higher capacity. *The emergency waiver is therefore meaningless if a transfer station lacks the necessary equipment, personnel and operating infrastructure to handle increased capacity as a result of an emergency.*

Id. at 28 (emphasis added).

82. This point was reinforced in written testimony provided by the then General Counsel of Petitioner NWRA, David Biderman, who explained:

> [The] bill will eliminate much of the capacity that New York City has to handle natural disasters that generate large volumes of waste. The transfer

> stations targeted by Intro 495 managed a substantial amount of the waste generated in the City after Hurricane Sandy, allowing the City to get back on its feet quickly. This legislation severely impairs the City's ability to deal with the waste generated by such storms and is short-sighted. The [Marine Transfer Stations], located on the waterfront, in flood zones, are not likely to be immediately available after a Sandy-type storm. Further, some of the targeted, transfer stations will likely close and the properties sold and converted to other uses if this bill is passed, meaning they will no longer be available in the event of an emergency. For this reason, the proposed waiver in the bill is not adequate.

Exhibit F, Affidavit of Steven Changaris, National Waste & Recycling Association, New York Chapter Director, dated November 14, 2018, at Exhibit B.

83. Mr. Biderman went on to explain how the bill would, if adopted, create disincentives for transfer station owners to invest in new equipment when faced with arbitrary reductions in permitted capacity, and called on interested parties to instead "work together" to develop solutions. *Id.*

84. Similar to Intro 1170, a wide array of witnesses provided testimony opposing the bill and explaining its potential (and likely) devastating impacts on the solid waste industry. Exhibit G is a copy of the written testimony of these groups before the Committee on February 13, 2015. The full record of written testimony is available at: https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1937616&GUID=2680B9A0-32EF-4B2F-BFD3-85D48111006F.

85. Ultimately, no final action was taken on Intro 495, but more importantly, the City made no effort to pursue voluntary reductions in permitted capacity at the transfer stations in the four community districts that had been previously negotiated by the DSNY.

D. The City enacted Intro 157-C/Local Law 152, requiring significant capacity reductions by private transfer stations with illusory exemptions and waivers.

86. Intro 157 (and its various iterations, 157-A, 157-B, 157-C) was the third attempt by the City Council to adopt a bill arbitrarily mandating forced capacity reductions at duly permitted transfer stations in the Brooklyn 1, Bronx 1, Bronx 2 and Queens 12 Community Districts.

87. On July 18, 2018, the City Council voted to adopt Intro 157-C.

88. Mayor de Blasio signed the bill into law on August 16, 2018.

89. As enacted, Local Law 152 will force reductions in permitted capacity for existing private putrescible and non-putrescible waste transfer stations in designated community districts deemed to be "overconcentrated" (Bronx 1 and 2, Brooklyn 1, and Queens 12). Exhibit H is a copy of Local Law 152 of 2018.

90. An "overconcentrated district" is defined as a community district with 10% or more of the total citywide permitted capacity for putrescible and non-putrescible solid waste transfer stations, including transfer stations operated by or on behalf of DSNY. Local Law 152 § 16-498.

91. Reductions in permitted capacity will be imposed beginning in October 2019, as transfer station operating permits are renewed, with full implementation achieved by October 2020. Local Law 152 § 16-498.1.

92. Permitted capacity at private putrescible and non-putrescible transfer stations in Community District 1 in Brooklyn will be reduced by 50% from existing capacities. *Id*. Permitted capacity at private putrescible and non-putrescible transfer stations in Community Districts 1 and 2 in the Bronx and Community District 12 in Queens will be reduced by 33%. *Id.*

93. Astonishingly, the record contains no explanation, rational, or otherwise, as to how these specific mandated reductions were determined for each community district.

i. Exemptions in Local Law 152 do not provide genuine relief and/or are based on flawed assumptions.

94. The local law includes several exemptions and waivers. Transfer stations that export all or a majority of waste by rail are exempt from the required capacity reductions, provided the transfer station does not use a public street to transport such waste between the transfer station and the rail facility. Local Law 152 § 16-498.2.

95. The local law allows the DSNY commissioner to "waive the reductions to permitted capacity and the limits to total quarterly capacity required by this chapter for the duration of any emergency." Local Law 152 § 16-498. Similarly, the local law also establishes 12 "exempted" days, which would allow transfer stations to accept up to their pre-Local Law 152 capacity on 12 days each year that follow holidays without waste collection. *Id.* The law assumes, without any basis, that impacted transfer stations will maintain equipment and employment levels to cover emergencies and these 12 days emergencies. However, Commissioner Garcia had previously testified that such an emergency waiver is "meaningless if a transfer station lacks the necessary equipment, personnel and operating infrastructure to handle increased capacity as a result of an emergency." Exhibit E, Intro 495 Hearing Transcript at 28. The same logic applies to "exempt" days after holidays. Further, as NWRA had previously explained "some of the targeted, transfer stations will likely close and the properties sold and converted to other uses if this bill is passed, meaning they will no longer be available in the event of an emergency." Exhibit F, Affidavit of Changaris at 2. The City's EAS even acknowledges that a significant number of transfer stations will be at risk of closure due to Local Law 152's forced capacity reductions.

96. Affected putrescible transfer stations can apply to exempt portions of certain waste throughput from being included in the calculation of required reductions (*e.g.*, average amounts exported by barge in the past three years; reserved tonnage for source separated organics; and average daily amounts of recycled metal, glass, plastic, paper and corrugated cardboard for the past three years). Local Law 152 § 16-498.2. Similarly, non-putrescible transfer stations may exempt up to 50% of the average daily amount of C&D debris recycled for the past three years. *Id.* As discussed below, these exemptions are prescriptive, rigidly structured and would provide little relief to small and mid-size transfer stations impacted by the measure.

97. For example, Local Law 152 allows a putrescible transfer station to exempt from the calculation of capacity required to be reduced the average daily amount of solid waste transported by barge for the three years preceding October 1, 2019. As an initial matter, the three-year look back window used to determine the average includes two years prior to the adoption of Local Law 152. The inclusion of years prior to the adoption of the Local Law does not allow impacted transfer stations the opportunity to alter their operations in order to maximize this potential exemption for materials transported by barge. Further, in order to obtain this exemption, a transfer station must actually modify its solid waste permit to restrict the use of its permitted capacity, or a portion thereof, exclusively to putrescible waste exported by barge. Local Law 152 § 16-498.2(b).

98. Once a transfer station has reserved a portion of its capacity to be exported exclusively by barge, it effectively loses the ability to operate under any changed circumstances where transport by barge is either impossible (*e.g.*, floods or other unavailability of barge transfer stations) or impractical (*e.g.*, increases in costs related to barge transportation).

99. Similarly, the Local Law's allowance for a partial exemption (up to 20% of permitted capacity) for source separated organic waste to be recycled requires that the transfer station modify its operating permit to restrict the use of its permitted capacity exclusively to source separated organic waste. Local Law 152 § 16-498.2(c). By requiring transfer stations to modify their permits to exclusively reserve capacity for source separated organics to be recycled, Local Law 152 ignores the fact that recycling markets can be volatile, and there will be times when the source separated organic materials cannot be economically processed for productive use. Further, the cap of 20% for source separated organics will directly impede the City's ability to meet its aggressive goals for organics recycling and is in conflict with existing City contracts.

100. For example, Metropolitan Transfer Station ("MTS"), which has a permitted capacity of 825 tpd, faces a default mandated reduction of 272 tpd (33%). If MTS were able to take full advantage of the organics reduction, it still would face a capacity reduction of 218 tpd (27%). The relief is minimal and inadequate. Exhibit I, Affidavit of Vincent Verrilli, President, Metropolitan Transfer Station, Inc., dated November 15, 2018, at 7.

101. Further, the exemption requires the facility to lock in a portion of permitted capacity exclusively for a specific component of waste. This completely undermines MTS's contracted obligation to support the City's organics waste initiative. In 2016, WeCare entered into a contract with the City to provide services to process source-separated food waste and other readily biodegradable organic waste ("SSO") to create useful end-products like compost. WeCare entered into a contract with MTS to provide the in-City capacity MTS needed to fulfill its contractual obligations to the City. All of this information was openly disclosed to the City, and the City even encouraged it. Because of the nature of the program, the WeCare/MTS agreement necessarily required significant flexibility, requiring MTS to accept anywhere

between 25 tons and 300 tons of SSO each day. On the low side, MTS is obligated to reserve tonnage for SSO that it won't receive, to the exclusion of other MSW that could be taken in by the facility on those days when SSO volume is light. On the high side, MTS is required to accept up to 135 tpd of SSO above the 165 tpd limit exclusively reserved for SSO. Yet, MTS it will receive no credit for that additional tonnage under the Local Law's SSO exemption. Local Law 152, and the organics exemption in particular, is at odds with the City's own organics waste program, rendering it arbitrary and capricious. Exhibit I, Affidavit of Verrilli at 8-9.

102. The Local Law's provisions regarding partial exemptions for recycled materials at putrescible and non- putrescible facilities are similarly flawed.

103. With respect to the partial exemption for recycled materials at putrescible waste facilities, Local Law 152 requires the DSNY Commissioner to determine the average daily amount of metal, glass, plastic, paper and corrugated cardboard recycled for the three years preceding October 1, 2019. The DSNY Commissioner "shall not include, in any amount required to be reduced, the lesser of (i) such average daily amount of recycled metal, glass, plastic, paper and corrugated cardboard or (ii) 20 percent of the transfer station's permitted capacity." Local Law 152 § 16-498.2(d).

104. Like other exemptions contained in the law, the exemption for recycled materials at putrescible facilities calculates the amount subject to the exemption using averages from the two years prior to the Local Law's adoption. This eliminates the possibility for impacted transfer station to alter their operations in order to maximize the potential exemption. The amount of recycled materials potentially subject to the exemption is arbitrarily capped at 20% of the transfer station's permitted capacity, arbitrarily penalizing those facilities that have made significant investments in equipment to maximize recycling.

105. The law offers no relief where an affiliated company processes recyclables at the transfer station or on an adjoining parcel. For example, Hi-Tech's affiliate, Scholes Street Recycling Corp, processes these materials at an adjacent recycling center. The two operations function together and rely on each other. Despite this, the Hi-Tech transfer station receives no benefit under the law for the materials processed for recycling by Scholes. Exhibit J, Affidavit of Thomas Toscano, CEO and President of Hi-Tech Resource Recovery dated November 13, 2018 at 7.

106. Finally, this exemption ignores the dramatic and routine fluctuations in the global commodities markets for recycled metal, glass, plastic, paper and corrugated cardboard. These global market fluctuations, which are largely driven by political decisions in China, are beyond the control of the impacted transfer station owners, but can make it impossible to sell recycled materials at certain times. *See*, Exhibit J, Affidavit of Toscano at 7-8; Exhibit K, Affidavit of Gino Casagrande, President, City Recycling Corp., dated November 13, 2018 at 8.

107. Local Law 152's provisions relating to recycled C&D material contain the same three-year lookback window as the provisions related to barge transportation, source separated organics, and recycled materials. Local Law 152 § 16-498.2(e). Unlike the provisions related to recycled materials at putrescible facilities, though, the provisions for recycled C&D materials allow for an exemption of 50% of the daily average amount of recycled C&D material, without limiting or capping that amount to a percentage of the transfer station's permitted capacity. *Id.* This, of course, raises the question as to why such a cap was included in the provisions related to recycled materials at putrescible transfer stations.

108. Perhaps the most significant flaw in the provisions related to recycled C&D materials is that Local Law 152 does not define what constitutes "recycled" for purposes of C&D

waste. This is in contrast to the provisions related to recycling at putrescible facilities, which specifically reference metal, glass, plastic, paper and corrugated cardboard. The Local Law does not specifically grant the Commissioner discretion in determining what constitutes recycled C&D material, nor does Local Law 152 direct DSNY to promulgate regulations to clarify what C&D materials will be considered "recycled."

109. Many of the targeted non-putrescible facilities have installed expensive equipment, or are planning further investment, to maximize their capability to process materials for reuse instead of disposal. Exhibit K, Affidavit of Daniel Colasuonno, President, Empire Recycling LLC, dated November 13, 2018, at 4; Exhibit L, Affidavit of Gino Casagrande, President, City Recycling Corp., dated November 13, 2018, at 3, 8. At times the materials may be available for reuse, but market demand fluctuates so it is uncertain whether those materials will be in fact reused or just disposed. The law fails to account for this possibility the targeted facilities are left in the dark as to whether they can even take full advantage of the partial exemption. Exhibit K, Affidavit of Colasuonno, at 7; Exhibit L, Affidavit of Casagrande, at 8.

E. The City failed to adequately study Local Law 152's environmental and socioeconomic impacts.

i. The City's hearing on Intro 157-C was not fair or impartial.

110. On June 19, 2018, the City Council Committee on Sanitation and Solid Waste Management held a hearing on Intro 157-B (the third iteration of Intro 157).

111. Despite the numerous concerns that were raised during the Committee hearings on Intro 1170 and Intro 495, no environmental or socioeconomic assessment or analysis of any kind was issued by the City prior to the hearing on Intro 157-B.

112. Nevertheless, Committee Chair Antonio Reynoso made numerous statements against the targeted transfer stations that lacked a factual basis in the record or did not provide any critical context.

113. For example, Chair Reynoso asserted that "private sanitation is one of the least regulated sectors in the entire City," Exhibit M, at 7. Exhibit M is a copy of the relevant portions of the transcript from the June 19, 2018 hearing. The full hearing testimony transcript is available at: https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3331918&GUID=B730F207-D5EF-45B3-9F9E-9F356EFC58C0&Options=&Search=. This statement is directly contrary to DSNY Commissioner Garcia and her predecessor DSNY Commissioner Doherty's testimony regarding Intro 1170 and Intro 495 that "transfer stations may be the most highly regulated industry in the entire City." Exhibit E, Intro 495 Hearing Transcript at 22-23; Exhibit C, Intro 1170 Hearing Transcript at 16. Chair Reynoso also falsely claimed that the industry "has acted in bad faith through this entire process," Exhibit M, Intro 157-B Hearing Transcript at 8, when prior testimony by multiple DSNY officials confirmed that the industry had agreed to the negotiated voluntary reductions in capacity at transfer stations in the four targeted community districts corresponding to the amount specified in the City's SWMP. Exhibit C, Intro 1170 Hearing Transcript at 15-18; Exhibit E, Intro 495 Hearing Transcript at 24.

114. Chair Reynoso claimed, without any basis, that the bill, if adopted, would "take additional trucks off the street." Exhibit M, Intro 157-B Hearing Transcript at 11. As the affidavits submitted in support of this Petition show, truck traffic mileage will actually increase because of the law, resulting in higher fuel and labor costs that will be passed onto customers and higher overall air emissions.

115. Chair Reynoso targeted one specific company erroneously asserting that Action Carting's "recycling rates at the Bronx facility decreased 23% between 2016 and 2017." Exhibit M, Intro 157-B Hearing Transcript at 8. This highly misleading statement failed to recognize the recent world-wide volatility and in some cases, collapse in recycling markets for certain commodities.

116. Chair Reynoso also stated: "We want the good transfer stations to continue to provide jobs. The bad ones need to go." Exhibit M, Intro 157-B Hearing Transcript at 13. The basis for this statement appears to be linked to the bill's supposed partial relief provisions for transfer stations that recycle or export waste by barge or rail. Yet, the bill's "relief" provisions would not provide relief but instead undermine transfer stations that engage in recycling because they are so poorly structured, and will undermine one transfer station's ability to support the City's own organic waste diversion initiative. The Chair's comment about jobs is particularly disturbing in light of the eleventh hour, superficial and flawed assessment released by the City grossly underestimating the potential job losses caused by Local Law 152.

ii. The City's EAS relied on erroneous assumptions and inaccurate data, which resulted in flawed conclusions.

117. Just moments before the vote on Intro 157/Local Law 152, the EAS was distributed to members of the City Council. Thus, Council members had no meaningful opportunity to review the EAS before voting. The public had no opportunity review or comment on the EAS prior to the vote. Exhibit N is a copy of the Environmental Assessment Statement prepared in support of Local Law 152, dated July 13, 2018.

118. The EAS's available slack capacity calculations for the transfer stations in the City are used to conduct a superficial waste displacement analysis and are foundations for the City's assessment of every potential environmental impact, including socioeconomic,

transportation, air and noise. These "slack" calculations are therefore are critical to the overall findings of the EAS and the negative declaration. However, the assumptions and methodology employed by the City to derive the projected post-Local Law 152 slack capacity and waste displacement are demonstrably wrong.

a. The City's slack capacity methodology is flawed.

119. Using tonnage data submitted by the transfer stations for years 2014-2017, the EAS calculates average daily waste volumes for putrescible and non-putrescible waste transfer stations. Exhibit N, EAS, 1.3.1. The EAS then subtracts the average daily volumes from the currently permitted transfer station capacity, and concludes that there is approximately 9,425 tpd and 15,332 tpd of currently available "slack" capacity at the City's private putrescible and non-putrescible transfer stations, respectively. *Id.*

120. Then, the EAS purports to assess the projected reduced transfer station capacity (utilizing their assumptions regarding the extent to which the private transfer stations are projected to take advantage of Local Law 152's exemptions), against the average daily waste volumes to project slack capacity/displacement following implementation of the required reductions. *Id.* Based on this analysis, the EAS concludes that, even after implementation of the required capacity reductions, there will be approximately 9,467 tpd of citywide slack capacity available to accommodate 1,265 tpd of private putrescible waste projected to be displaced. Exhibit N, EAS, Table 1-8.

121. Similarly, the EAS concludes that approximately 7,639 tpd of citywide slack capacity will be available to accommodate approximately 1,297 tpd of non-putrescible waste projected to be displaced. *Id.*, Table 1-9. Using the approach discussed above, the EAS concludes that sufficient slack capacity for putrescible and non-putrescible wastes would exist after applying Local Law 152's forced reductions, and uses the same slack capacity calculations

as a pivotal input in it assessment to conclude that the law has no potential to cause significant adverse environmental impacts.

122. The affidavits by companies and Petitioners' expert submitted in support of this Petition show conclusively that the City's slack capacity calculation methodology is wrong:

a. Even if a four-year average calculation was a legitimate method to determine slack capacity at transfer stations in a waste shed, the City's slack capacity calculations apparently do not account for times periods when the facility is not even open or permitted to be open to accept waste and therefore understates the amount of waste the facility actually receives on a typical day. Most if not all transfer stations operate only five and a half days a week because they are closed on Sunday and are open only a half day on Saturdays. For illustration, Petitioners' expert recalculated a multi-year average to adjust for this reality and produced results significantly different than presented in the EAS:

i. For City Recycling, the EAS calculated the average tons of material processed at its facility was 1,254 tpd, or 247 tons below its permitted capacity of 1,500 tpd. When adjusted for when the facility is actually open to operate, the average jumps to 1,379 tpd – a 125 tpd difference than presented in the EAS.

ii. For Empire Recycling, the EAS calculated the average tons of material processed at its facility was 215 tpd, or 85 tons below its permitted capacity of 300 tpd. When adjusted for when the facility is actually open to operate, the average increases to 282 tpd – a 67 tpd difference.

If this is extrapolated across all facilities, the results would be significantly different than presented in the EAS, rendering the City's calculations wholly deceptive and inaccurate. Exhibit O**,** Affidavit of Bob Wallace, President, WIH Resource Group, dated November 14, 2018.

b. However, even correcting for this, the City's multi-year average calculations are still not an appropriate methodology to determine available slack capacity with any level of confidence. By using a four year average, the EAS fails to account at all for daily, weekly, and seasonal fluctuations in waste generation on both the putrescible and non-putrescible sides. As a result, a four-year average used by the City significantly overstates the available slack capacity at these facilities. This is critically important because when a transfer station applies for and secures a permit that contains a limitation on the amount of waste it may accept each day, the permitted capacity is intended to cover the facility's busiest days, not a daily average calculated over a week, month, year, or longer. Each of the companies that have provided affidavits confirm that they regularly process up to or close to their permitted capacity. Each of them confirms that they do not have any available slack capacity. Exhibit A, Affidavit of Verrilli, at 4-5; Exhibit J, Affidavit of Toscano, at 8-9; Exhibit K, Affidavit of Colasuonno, at 8-9; Exhibit L, Affidavit of Casagrande, at 5-6. If the City's calculations for available slack capacity is incorrect for these companies, then the EAS most likely is incorrect for all transfer stations in the City because the methodology itself cannot produce reliable or accurate results. Exhibit O, Affidavit of Wallace at Exhibit A thereto.

c. The EAS assumes, without analysis or support, that certain facilities identified as having significant amounts of available slack capacity (e.g., facilities that ship by rail), have the necessary rights, equipment and supporting infrastructure to utilize that capacity to accommodate waste displaced by Local Law 152. In the case of facilities relying on rail or barge transportation, the bottleneck could be caused by third party operators, not the transfer station owners. The City made no attempt to confirm that facilities that theoretically have significant slack capacity under their permits using the four-year average can actually support that capacity in reality.

123. The implications to the credibility of the entire EAS are severe because the City used their inaccurate calculation of available slack capacity as a foundation to assess subject matter specific impacts (waste displacement, increased truck traffic, congestion, noise, air emission etc.). Because the EAS overstates the available slack capacity at each facility and within the system as a whole, it underestimates the amount of waste that will be displaced as a result of Local Law 152's forced reductions in capacity, and thus fails to properly assess the impacts that displaced waste will have as thousands of tons of waste are redirected across the City. As a result, the EAS dramatically understated the law's potential impacts and allowed the City to improperly conclude that no further inquiry into the law's impacts was required.

b. The EAS wildly understates potential job losses to avoid a thorough environmental review in compliance with law.

124. The EAS suffers from a separate fatal flaw. CEQR mandates that if a proposal has the potential to result in 100 or more lost jobs, a thorough job displacement assessment is required; a significant impact would trigger a full environmental review before the City may make a decision on the proposal. The EAS acknowledges that the law would likely result in job

losses, including full facility closure (100% job loss) for several companies, but uses a theoretical calculation of employment levels at each transfer station to conclude that potential job losses (81 jobs) will remain below the threshold for further assessment.

125. In fact, data provided by the transfer station owners and other information presented on information and belief, show that the EAS has significantly understated the number of people employed at the impacted transfer stations, and therefore also significantly understated potential job losses:

a. For City Recycling, the EAS estimates that the Local Law would displace a theoretical 9.5 full time employees; City Recycling has 62 full time employees, and the facility believes that in a reasonable worst case scenario, its 50% capacity reduction could cause it to close. In that case, all 62 full time employees would lose their jobs or their jobs would be displaced if the facility closes. Exhibit L, Affidavit of Casagrande at 6.

b. For Empire Recycling, the EAS calculates a theoretical full time employee number of 4.7 and assumes that the facility would close in a reasonable worst case scenario; Empire Recycling actually has 21 full time employees and all would lose their jobs if the facility closes. In addition, if Empire Recycling closes, an additional five people could lose their jobs at a related carting company, for a total of 26 lost jobs. Exhibit K, Affidavit of Colasuonno at 10.

c. For Regal Recycling, the EAS estimates that the Local Law would displace a theoretical 4.8 full time employees; upon information and belief, Regal Recycling has approximately 40 employees and since it faces a 33% reduction in capacity and, according to the EAS, a net income reduction of up to 49%, a

reasonable worst case scenario should assume the facility could close. All of its employees presumably would lose their jobs or their jobs would be displaced if the facility closes.

d. For GADS, the EAS estimates that the Local Law would displace a theoretical full time 4.4 employees; upon information and belief, the GADS facility has approximately 40 employees, and since it faces a 50% reduction in capacity and, according to the EAS, a net income reduction of up to 32%, a reasonable worst case scenario should assume the facility could close. All of its employees presumably would lose their jobs or their jobs would be displaced if the facility closes.

126. Importantly, the EAS acknowledges that in a reasonable worst case analysis five facilities may close due to Local Law 152. Even assuming that the EAS accurately calculated employment levels at all the other facilities, the analysis above of the potential job losses at a handful of targeted facilities proves losses that far exceed the 100-job loss threshold that precludes issuance of the negative declaration. The job losses due to closure of the four facilities would be approximately 168. If added to the City's calculated job losses at all other facilities, the total comes to approximately 226 lost jobs, yet the legally mandated assessment of the impacts of these job losses was never performed.

127. The EAS also fails to properly account for the risk of secondary job losses, as explained in the accompanying affidavits of several targeted transfer stations. *See, e.g.*, Exhibit L, Affidavit of Casagrande, attached letters from vendors.

128. Had the City bothered to verify employment levels at the City's transfer stations and included these numbers in the EAS, it could not have issued a negative declaration under any circumstances.

iii. The City failed to account for the significant impacts to Petitioners and the public that will result from Local Law 152.

129. Petitioner City Recycling is part of the vertically integrated business, where an affiliated carting company relies heavily on City Recycling's transfer station. The facility is located in a manufacturing zone. It regularly operates at or close to its permitted capacity. City Recycling has invested approximately $5 million in its facility to improve operations and minimize impacts. Facing a 50% reduction in permitted capacity and potential closure will result a loss of this investment, loss of jobs and significant economic harm to its affiliated carting company that will have to find new transfer stations at higher prices.

130. Petitioner Hi-Tech Resource Recovery similarly is part of a vertically integrated business involving a carting operation and a recycling operation (which is located on a parcel directly adjacent to the Hi-Tech facility) owned by two affiliated companies. These companies depend on each other. The facility is located in a manufacturing zone. Hi-Tech regularly operates at its permitted capacity. Hi-Tech has installed state-of-the-art equipment to minimize impacts to the environment. It has been planning to make further innovative improvements at a cost of $250,000, but may not be able to proceed because of Local Law 152. Hi-Tech cannot take proper advantage of the partial exemption for recycling because most of the recycling occurs on the adjacent parcel run by its affiliate. Facing a 50% reduction in permitted capacity and potential closure will result a loss of this investment, loss of jobs and follow up impacts to its affiliated carting company.

131. Petitioner Empire Recycling is also part of a vertically integrated business where an affiliated carting and construction companies rely heavily of the availability of the Empire Recycling facility. The company has invested nearly $10 million dollars in improvements to make operations more efficient and environmentally sound, and is planning another $3 million investment to further reduce offsite impacts. The way the law is written, it is not clear if Empire can get the benefit of the partial exemption for recycling at non-putrescible facilities even though a significant amount of material accepted is processed to be available for reuse. A 50% reduction in permitted capacity and potential closure will result a loss of Empire's substantial investments, loss of jobs and cascading economic losses to its affiliated carting and construction companies.

132. Petitioner Metropolitan Transfer Station faces a 33% forced reduction in its permitted capacity. The facility is located in a manufacturing zone, surrounded by other commercial and industrial uses and a City waste water treatment plant. The facility operates at or close to capacity. As explained earlier, the MTS facility was selected by WeCare to support its contract obligations to the City in relation to its organic waste initiate. This requires MTS to have new equipment to process the waste. The obligations MTS faces in the WeCare contract are in conflict Local Law 152, including the partial exemption the law purports to provide for processing source separated organic waste. MTS may not be able to comply with both and remain open. A mandated capacity reduction or potential closure will result in a loss of investments, loss of jobs, and secondary impacts to vendors and suppliers.

133. For the past three years, Petitioner Mr. Batista has been employed as a field coordinator by Titan Industrial Services, which is an affiliate of Petitioner Empire Recycling Services LLC. As part of his job he is required to drive to and from job sites around New York City that are being serviced by Titan. He is a City resident and also drives in the City for

personal reasons. Mr. Batista is concerned that the transfer station capacity reduction law will cause additional truck traffic on the streets of New York City, resulting in additional traffic congestion, noise, and air emissions, all of which would affect him personally. He is also concerned that the law may result in the closure of the Empire Recycling Services transfer station. Although Mr. Batista does not work for Empire Recycling Services, Titan Industrial Services uses the Empire Recycling Services transfer station to consolidate and process material it collects, so Mr. Batista is concerned that the law's impacts on Empire Recycling Services transfer station could result in secondary effects on Titan Industrial Services' business operations and his employment there.

134. For over three decades, Petitioner Mr. Mackie has worked for Petitioner Hi-Tech Resource Recovery, Inc., which has a transfer station located at 130 Varick Avenue, Brooklyn, New York. Mr. Mackie is concerned that the City's transfer station capacity reduction law could cause the Hi-Tech transfer station to reduce operations resulting in the loss of his job, or even to close, resulting in the loss of all jobs at the station. Mr. Mackie is a New York City resident and regularly drives in the City to and from work and for personal reasons. He is concerned the City's new law will result in additional truck traffic on the streets of New York City, causing more traffic congestion, noise, and air emissions, all of which would affect him personally.

F. The City improperly segmented review of Local Law 152 and the City's Commercial Waste Zones Plan

135. At the June 19, 2018 hearing on the law, Commissioner Garcia offered revealing testimony that linked the goals of Intro 157/Local Law 152 to another plan the City was about to formally announce. Commissioner Garcia noted that the Department "is working toward the implementation of commercial waste zones in New York City . . . . " and noted that the

"initiative represents a dramatic overhaul of the private waste hauling industry." Exhibit M, Intro 157-B Hearing Transcript at 23-24.

136. Commissioner Garcia further testified that "[a] zone system will also dramatically reduce truck traffic associated with this industry by 60% or more while maintaining high quality and low-cost service to New York City businesses . . . . This initiative will improve the quality of life for New Yorkers living and working across the city, *but these benefits will be particularly felt in the neighborhoods with the highest concentration of transfer stations, the exact communities we are discussing today.* We are on track to release the implementation plan this summer." *Id.*, at 25 (emphasis added).

137. Commissioner Garcia's testimony effectively admitted that consideration of impacts of the related initiatives was being segmented, which violates SEQRA and CEQR.

138. And in fact, on November 7, 2018, DSNY released a proposed plan concerning commercial waste districts: "Commercial Waste Zones: A Plan to Reform, Reroute, and Revitalize Private Carting in New York City." Exhibit P, is a copy of DSNY's November 7, 2018 Press Release announcing the Commercial Waste Zones Plan.

139. Commissioner Garcia described the plan as "a comprehensive blueprint to create a safe and efficient collection system for commercial waste." *Id*.

140. Council member Reynoso stated: "Today marks a critical milestone in our effort to bring meaningful, comprehensive reform to New York City's private sanitation industry." *Id.* This is essentially the same justification Council member Reynoso gave for Local Law 152.

141. The plan proposes to establish 20 commercial waste zones across the five boroughs of the City with 3 to 5 private carters operating per zone. These carters currently rely on transfer stations, often affiliated, to provide services to their customers.

142. In conjunction with the release of the plan, DSNY issued an Environmental Assessment Statement, Positive Declaration and Notice of Scoping Meeting, and Draft Scope of Work for a Draft Environmental Impact Statement for the Commercial Waste Zone program. *See* https://www1.nyc.gov/assets/dsny/site/resources/reports/commercial-waste-zones-plan.

143. In other words, the City determined to proceed with Local Law 152 mandating forced permitted capacity reductions at many of these transfer stations without conducting an environmental impact analysis, despite knowing that the Commercial Waste Zone plan was about to be released that requires a full environmental review under SEQRA before the plan can be finalized.

144. Despite their overlapping and related goals, the City improperly segmented the review of Local Law 152 and the Commercial Waste Zone plan and also used this segmentation to justify issuance of a negative declaration for Local Law 152 and avoid full environmental review of the law's impacts.

FIRST CAUSE OF ACTION:
The City Failed to Take a Hard Look at Potential Impacts of Local Law 152, in Violation of the State Environmental Quality Review Act.
(As to all Petitioners)

145. Petitioners re-state and re-allege the preceding paragraphs 1 – 144 as if fully stated here.

146. SEQRA requires an agency to identify the relevant areas of environmental concern, take a "hard look" at them, and make a "reasoned elaboration" of the basis for its final determination. In order to take the required "hard look" at potential impacts of a proposed local law, an agency must give due consideration to pertinent environmental factors. SEQRA has a relatively low threshold for the preparation of an EIS: where a significant adverse impact has been identified, it cannot be ignored, and an EIS must be prepared.

147. CEQR adapts and refines SEQRA's requirements to account for the special circumstances of New York City.

148. The City Respondents violated SEQRA and CEQR by failing to identify potential impacts, take a "hard look" and make a "reasoned elaboration" of the basis for the negative declaration in the EAS.

149. The City's EAS failed to identify relevant areas of environmental concern by adopting an arbitrary and inaccurate analysis of the slack capacity of transfer stations in the affected community districts.

150. The City's EAS inaccurately calculated an average daily tonnage as the basis for its slack capacity analysis, and therefore its estimates of slack capacity are much higher than the actual difference that may exist between the transfer stations' permitted capacity and their day-to-day operational volumes.

151. The City's EAS fails to identify substantial impacts arising from the reduction of capacity that the transfer stations—and the City's overall waste management system—rely on as part of normal operations.

152. The City failed to identify and consider substantial adverse impacts, including (i) increased truck traffic related to hauling waste farther to unload it at transfer stations in unaffected districts; (ii) increased air emissions from trucks, as a result of the increase in miles traveled; and (iii) increased noise impacts from trucks, as a result of the increase in miles traveled.

153. The City also erroneously concluded that the adverse socioeconomic impact of potential job losses was not significant, because the City substantially underestimated job losses as a result of Local Law 152. The City relied on grossly inaccurate assumptions and data to reach

its estimate of 81 job losses. A simple survey of the transfer stations themselves would have revealed that Local Law 152 will directly eliminate far more than 100 jobs, and will indirectly eliminate even more.

154. Local Law 152's socioeconomic impacts will exceed the CEQR Technical Manual screening number of 100 for direct employment displacement, mandating further assessment. Further, the socioeconomic impact of the law's direct and indirect job losses would be environmentally significant, and an EIS should have been prepared before Local Law 152 was enacted.

155. The City also failed to consider any reasonable and feasible alternatives to these forced capacity reduction. In this instance, a reasonable and feasible alternative has always been available: negotiated capacity reductions of 6,000 tons per day at transfer stations in the four community districts consistent with the City's own SWMP.

156. In sum, the City Respondents failed to take the required "hard look" at the likely potential environmental and socioeconomic impacts of Local Law 152 and thus the EAS does not meet the substantive requirements of SEQRA and CEQR. Accordingly, the law should be invalidated.

SECOND CAUSE OF ACTION:
The City Impermissibly Segmented its Environmental Review of Local Law 152 from its Development of Commercial Waste Zones, in Violation of the State Environmental Quality Review Act.
(As to all Petitioners)

157. Petitioners re-state and re-allege the preceding paragraphs 1 – 156 as if fully stated here.

158. SEQRA prohibits segmented review of related actions to avoid the consideration of related, cumulative impacts. Because SEQRA's policy is to balance the goals of commercial development and maintenance of ecological integrity, an assessment of the cumulative impact of

other proposed or pending developments is necessarily implicated in the final approvals for parts of a larger plan.

159. SEQRA's regulations expressly require an agency to review the cumulative impacts of related actions:

> For the purpose of determining whether an action may cause [significant adverse environmental impact], the lead agency must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions which are:
>
> (i) included in any long-range plan of which the action under consideration is a part;
>
> (ii) likely to be undertaken as a result thereof; or
>
> (iii) dependent thereon.

6 NYCRR § 617.7(c)(2).

160. Local Law 152 is part of a larger City plan to create a five-borough waste management plan, which includes the implementation of commercial waste zones.

161. At the time the City was considering Intro 157 and prepared the EAS, DSNY informed the City that DSNY was preparing a commercial waste zone plan, which was intended to dramatically "overhaul … the private waste hauling industry," "reduce truck traffic associated with this industry by 60% or more" and "improve the quality of life for New Yorkers living and working across the city" and for which the "benefits will be particularly felt in the neighborhoods with the highest concentration of transfer stations." Exhibit M, Testimony of Kathryn Garcia, at 23-24. DSNY stated that it was aiming to release the commercial waste zone plan in summer 2018.

162. On November 7, 2018, the City released its formal plan to create franchise zones for private putrescible waste haulers within the City, titled "Commercial Waste Zones." Exhibit Q is a copy of New York City Department of Sanitation, Commercial Waste Zones, A Plan to Reform, Reroute, and Revitalize Private Carting in New York City (Nov. 2018). Pursuant to the

Commercial Waste Zones Plan, the City will require private hauling companies to submit "waste management plans" as part of their bids to operate in designated zones. The plans will be rated based on three general principles: sustainability, reliability, and equity. Included in the discussion of "Waste Equity" under this program goal is a summary of Local Law 152, describing how Local Law 152 will "reduce the amount of waste that can be taken at transfer stations in four neighborhoods that bear the brunt of waste management infrastructure in the city." Exhibit Q, Waste Zone Plan at 49.

163. In determining whether two projects are related so as to require cumulative review under SEQRA, guidance issued by NYSDEC identifies several factors should be considered: common purpose; similar time; shared location; common impacts; common ownership; common plan; interdependent utility; and inducement to approve other phases.

164. Local Law 152 and the Commercial Waste Zones Plan are related projects for which the City should have, but did not, conduct a cumulative review:

- they are part of the same long-range plan to "dramatic[ally] overhaul … the private waste hauling industry" (Exhibit M, Intro 157-B Hearing Transcript at 24);
- they share a common purpose of reducing truck traffic and related air emissions and traffic congestion in the affected neighborhoods;
- they are part of a common plan to reform the commercial solid waste system, indeed, the Commercial Waste Zones Plan incorporates Local Law 152 into its program goals;
- they are both under the control of the City;
- they affect the same geographic areas; and
- their timing is coordinated: Local Law 152 was enacted on August 16, 2018, and the City released its Commercial Waste Zones plan on November 7, 2018.

165. Although the City has concluded that the Commercial Waste Zones plan requires an EIS, and has commenced the process of preparing one, it failed to cumulatively consider the impacts of the Commercial Waste Zones plan and Local Law 152.

166. Because the City is planning to implement its Commercial Waste Zones plan as part of the same overhaul of the City's private waste hauling system that includes Local Law 152, the impacts of both measures should have been considered cumulatively.

167. The City's separation of its review of the two measures constitutes impermissible segregation under SEQRA, by avoiding the complete review of the impacts of Local Law 152, and separating them from the impacts that the City must address under the EIS for the Commercial Waste Zone plan.

168. For this reason, Local Law 152 should be annulled.

THIRD CAUSE OF ACTION:
The City's Adoption of Local Law 152 Failed to Abide by the SWMP.
(As to all Petitioners)

169. Petitioners re-state and re-allege the preceding paragraphs 1 – 168 as if fully stated here.

170. The SWMP was drafted by DSNY pursuant to Environmental Conservation Law § 27-0707. It is a broad planning document designed to establish the City's approach to dealing with solid waste management for 20 years of waste management in the City.

171. A municipality's inclusion in an approved local SWMP is a prerequisite for any waste management facility to accept waste from that municipality. *See* 6 NYCRR 366-1.1. Similarly, an applicant for a solid waste management facility permit must demonstrate that its proposed facility is consistent with an approved SWMP covering the location of the proposed facility. *See Id*.

172. The SWMP was supported by a comprehensive EIS that closely examined the impacts of DSNY's detailed proposal for handling and processing solid waste. Once the environmental review was undertaken, the City Council adopted local legislation granting DSNY authority to submit the plan to NYSDEC.

173. In October 2006, NYSDEC approved the plan, as required at the time under 6 NYCRR Subpart 360-15 (now 6 NYCRR Part 366).

174. Local Law 152 is in direct conflict with the SWMP. The SWMP contemplates a potential reduction in permitted putrescible and C&D transfer capacity of up to 6,000 tpd, through negotiation with transfer station owners, or legislative action if negotiations were not successful. Exhibit A, SWMP at § 4.4.4. By contrast, Local Law 152 will require reductions of approximately 10,500 tpd, imposed by law despite successful negotiations to achieve the SWMP's 6,000 tpd reduction.

175. DSNY witnesses, in their testimony on the proposed Intro 1170—a predecessor bill to Intro 157—stated that the reductions in permitted transfer station capacity to be imposed by the law were a departure from the SWMP.

176. The SWMP specifically provides that reductions in permitted capacity should "not affect the City's operational ability to dispose of City waste." Exhibit A, SWMP at 4-10. Local Law 152 contravenes this requirement of the SWMP in several ways: its significant reductions in permitted transfer station capacity, the resulting shutdown of small to medium-sized transfer stations, and the uncertain ability of transfer stations in unaffected districts to accommodate the displaced waste.

177. Despite the fact that Local Law 152 will substantially alter components of the 2006 SWMP, the City Council failed to pursue a formal amendment and NYSDEC approval of

the SWMP, as required by NYSDEC's regulations and the 2006 SWMP. 6 NYCRR Subpart 360-15.11(a) ("Modifications to plans approved pursuant to this Subpart must be submitted to the department for approval.").

178. Under the current regulations, any changes to the approved SWMP must be incorporated in a Biennial Update, which must also be approved by NYSDEC. 6 NYCRR 366-5.1(b).

179. As noted above, affected transfer stations in the four community districts targeted by Local Law 152 comprise 75% of the City's total permitted transfer station capacity. As such, the reductions imposed by Local Law 152 will change the management of the great majority of waste in the City and will alter the structure of solid waste transportation and management throughout the City. Passage of Local Law 152 was therefore a significant change to the approved SWMP, and required that the City formally modify the plan and seek approval from NYSDEC.

180. By leaving the 2006 SWMP in place without first obtaining NYSDEC's approval of a modification addressing Local Law 152's capacity reductions, the City subverts NYSDEC's requirements in two ways. First, the City benefits from having an approved SWMP in place that allows solid waste management facilities to accept its waste, though it has changed important aspects of the waste management system that were the basis of the SWMP, without getting NYSDEC's prior approval. Second, applicants for solid waste management facility permits who would receive waste from the City must demonstrate that their proposal is consistent with the SWMP—but the SWMP no longer reflects the actual tonnages that may be managed by transfer stations in the community districts affected by Local Law 152.

181. For these reasons, Local Law 152 violates lawful procedure and is arbitrary and capricious.

FOURTH CAUSE OF ACTION:
Local Law 152 Is Preempted Because It Conflicts with State Law.
(As to all Petitioners)

182. Petitioners re-state and re-allege the preceding paragraphs 1 – 181 as if fully stated here.

183. Local Law 152 is inconsistent with NYSDEC permits issued to the private transfer stations, including those owned by Company Petitioners, under 6 NYCRR Part 360-series regulations and New York City's NYSDEC-approved SWMP.

184. Currently, the capacity permitted by DSNY is the same as the amount permitted by NYSDEC at each transfer station located in the City. *See, e.g.*, Exhibit L, Affidavit of Casagrande, at 4-5. Local Law 152 reduces capacity at waste transfer stations far below the level permitted under NYSDEC-issued permits that it would, for a number of small and mid-size transfer stations, amount to a revocation of their permits.

185. Local Law 152 has curtailed the rights provided by NYSDEC to the private transfer stations because it is tantamount to a modification or partial revocation of the state permits.

186. Under NYSDEC's regulations, transfer stations' permits may only be modified or revoked based on six grounds set forth in 6 NYCRR § 621.13, and then only after notice to the facility and an opportunity for a hearing. 6 NYCRR § 621.13(c), (d). The City has not invoked that formal modification procedure for the transfer stations' permits.

187. Local Law 152 would also prevent the City from managing its solid waste management system as approved by NYSDEC in the SWMP. As discussed above, the City's SWMP was prepared, submitted, and approved under N.Y. ECL § 27-0707, and must be

biennially reviewed and updated under 6 NYCRR § 366-5.1(b). Because of the restrictions on capacity imposed by Local Law 152, the City cannot comply with its SWMP while enforcing Local Law 152.

188. Local Law 152 violates the New York Constitution, Article 9, § 2(c), and N.Y. Municipal Home Rule Law § 10(1), because it is inconsistent with, and preempted by, New York State law and regulations governing Solid Waste Management and permits issued under those laws. Local Law 152 should therefore be annulled.

FIFTH CAUSE OF ACTION:
Local Law 152 Is Unconstitutionally Vague.
(As to all Company Petitioners)

189. Petitioners re-state and re-allege the preceding paragraphs 1 – 188 as if fully stated here.

190. Due process requires that a statute or regulation be sufficiently definite that persons of common intelligence do not need to guess at its meaning. Moreover, the law must provide officials with clear standards for enforcement to prevent arbitrary enforcement of the law.

191. Local Law 152 does not satisfy these standards.

192. The Local Law does not address how its capacity reductions would be applied in the future if the affected community districts are no longer "overburdened districts." Local Law 152 provides no guidance or criteria as to whether or how its 33–50% reductions are to be factored into volume calculations under DSNY's Rules (see New York City, N.Y., Rules, Tit. 16 §§ 4-06(x), 4-17(r)) in the case of an applicant for a new transfer station permit, or of an applicant for a capacity expansion, if the affected districts are not "overburdened" at the time.

193. New NYC Administrative Code Section 16-498.4 also prohibits DSNY from increasing "permitted capacity for any community district that would result in such district

becoming an over-concentrated district." Local Law 152 provides no standards for how DSNY would apply this prohibition among multiple applicants for increased capacity or new permits.

194. New Code Section 16-498.2 creates exceptions from the local law's capacity reductions for certain amounts of recycled materials. However, the law is unacceptably vague in how the exception should be applied. The exception requires DSNY to determine the average daily amount of various materials "recycled for the three years preceding October 1, 2019 . . . by each transfer station." NYC Admin. Code § Section 16-498.2(d).

195. Local Law 152 does not define the term "recycled," nor is there a definition that applies to the new Chapter 4-H created by the local law. The lack of a definition for "recycle" creates ambiguity for many types of material re-use. For example, putrescible waste landfills accept certain kinds of recovered materials for use as daily cover over each day's deposited waste, under Beneficial Use Determinations by NYSDEC. Those daily cover materials are typically buried in the landfill by the next day's waste. Local Law 152 provides no guidance as to whether that use could be counted as "recycling."

196. Local Law 152 also provides no criteria or standards for how to count recyclable materials that a transfer station separates for recycling, but which are not purchased for use in a finished product because of market conditions.

197. As a result of these faults, transfer station owners and applicants for new transfer station permits cannot determine whether or how Local Law 152 will apply to them. Further, officials charged with implementing Local Law 152 have no standards to apply to these situations, creating the risk of arbitrary enforcement.

198. The City's enactment of Local Law 152 subjects Petitioners to a vague law and arbitrary enforcement of that law, in violation of their due process rights under the 14th

Amendment of the U.S. Constitution. Accordingly, Local Law 152 is unconstitutional and should be invalidated.

SIXTH CAUSE OF ACTION:
Local Law 152 Violates the Transfer Stations Owners' Substantive Due Process Under the Fourteenth Amendment of the U.S. Constitution, and Is a Violation of Their Civil Rights Actionable Under 42 U.S.C. 1983.
(As To All Company Petitioners)

199. Petitioners re-state and re-allege the preceding paragraphs 1 – 198 as if fully stated here.

200. The City acted under color of state law in enacting Local Law 152, which deprives Company Petitioners of their constitutionally protected rights, privileges, or immunities in violation of the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. As a result, Company Petitioners are entitled to relief under 42 U.S.C. § 1983.

201. Company Petitioners hold permits issued by NYSDEC and the City's DSNY, which, among other things, permit the Plaintiffs to receive specific daily tonnages of waste for transfer to disposal or reuse facilities. Each permit was reviewed and granted under statutory and regulatory criteria governing transfer stations in New York State and New York City. Based on the issuance of the permits, the Company Petitioners invested money and assumed long-term debt obligations to fund the substantial infrastructure needed to properly operate a transfer station: this infrastructure includes land, buildings, truck scales, heavy equipment, and sorting and recycling machinery. These investments commonly total millions of dollars for a single facility. *See, e.g.*, Exhibit K, Affidavit of Colasuonno, at 3 (investment of approximately $9.5 million to acquire permit and facility in 2015, with approximately $2.5 million outstanding loan personally guaranteed).

202. By structuring their businesses and investments to comply with the requirements of a regulatory system that both governs and creates the market that Company Petitioners are

involved in, the Company Petitioners relied on NYSDEC and the City to maintain and enforce that regulatory system in a rational manner, based on objective data and market factors.

203. Local Law 152 changes the fundamental operational factor affecting the operations and revenues of the Company Petitioners' transfer stations, and by drastically decreasing the permitted capacity of each of the affected stations, the law effectively deprives Plaintiffs of their rights and privileges under New York State law, prior New York City law, and their permits.

204. Local Law 152 is arbitrary and irrational because the legislative facts on which the legislation was apparently based could not reasonably be conceived to be true by the City Council.

205. There is no rationale for the capacity reductions mandated by the law. There is no evidence in the record that those reductions in capacity would reduce impacts in the residential neighborhoods that the Council sought to affect. Coupled with the City's recognized likelihood that those reductions could put several transfer stations out of business, it was irrational and arbitrary for the Council to adopt those capacity reductions in the absence of any rational basis to assume that they would achieve the law's purposes.

206. The Council had no basis to believe that the impacts or effects identified by the EAS were correct or even comparable to the law's actual impacts, including the estimate for the number of jobs that would be lost.

207. Because the design of the law and the bases for its environmental review could not reasonably be conceived to be true by the City Council, Local Law 152 was not supported by a legitimate legislative purpose furthered by a rational means.

208. The City Respondents' enactment of Local Law 152 deprived Company Petitioners of their substantive due process rights, in violation of 42 U.S.C. § 1983. Local Law 152 should be invalidated and these Company Petitioners are additionally entitled to damages and attorneys' fees.

209. No previous application has been made for the relief requested.

RELIEF

WHEREFORE, Petitioners respectfully request that this Court enter a judgment against Respondents-Defendants pursuant to Article 78 and 42 U.S.C. § 1983, as follows:

(1) Declaring that Local Law 152 was enacted in violation of the State Environmental Quality Review Act and the City Environmental Quality Review requirements;

(2) Declaring that Local Law 152 is arbitrary and capricious and has no rational basis;

(3) Declaring that Local Law 152 is invalid because it impermissibly conflicts with NYSDEC's solid waste management regulations and permits issued under those regulations, and with the City's Solid Waste Management Plan;

(4) Declaring that Local Law 152 violates Petitioners' due process rights;

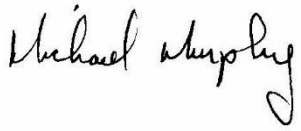
(5) Declaring that Local Law 152 of 2018 is annulled and shall have no effect;

(6) Awarding Petitioners damages in an amount to be determined at trial and their reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and any other applicable laws;

(7) Granting Petitioners such other and further relief as the Court deems just and proper.

Dated: November 16, 2018
New York, New York

Respectfully submitted,



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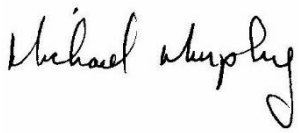
ATTORNEY VERIFICATION

Michael G. Murphy, an attorney admitted to practice in the courts of the State of New York, affirms as follows:

That he is an attorney for the Petitioners-Plaintiffs in the above entitled action with offices located at 477 Madison Avenue, 15th Floor, City of New York, County of New York, State of New York; that he has read the foregoing Petition and Complaint and knows the contents thereof; that the same is true to his knowledge, except as to the matters stated to be alleged upon information and belief, and that as to those matters he believes them to be true;

That the reason why this verification is made by deponent instead of the Petitioners-Plaintiffs is because the Petitioners-Plaintiffs are not within the County of New York, which is the county where deponent has his office. Deponent further says that the grounds of his belief as to all matters in the Petition and Complaint not stated to be upon his knowledge are based upon his review of the record of Local Law 152 and his conversations with Petitioners-Plaintiffs.



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